IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5222 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGLUBHAI DADBHAI BHISARIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS HB PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Bhavnagar, on 29, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger as well as dangerous person from 29th of November, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration five crimes registered against the petitioner, all before Gadhda Police Station. Out of this five crimes, three were registered against the petitioner for the offences punishable under Sections 323, 324 and 506(2) of the Indian Penal Code while the remaining two crimes were registered against the petitioner for the breach of the provisions of the Bombay Prohibition Act. The first three crimes were registered on 30th of October, 2002, 14th of October, 2003, and on 29th of July, 2004 while the remaining two cases under the Bombay Prohibition Act were registered against the petitioner on 8th of January, 2003 and on 10th of October, 2004.

4. Secondly, the detaining authority also relied upon four in-camera statements of the witnesses, as recorded by the sponsoring authority on 25th of October, 2004 and verified by the sponsoring authority on 26th of November, 2004. The identity of the witness is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. The witnesses have referred to the incidents occurred around 25th of September, 2004, 15th of October, 2004, 10th of September, 2004 and on 5th of October, 2004. In the first incident, the petitioner demanded motorcycle from the witness for transporting illegal liquor and on refusal, the witness was beaten. In the second incident, the petitioner demanded Rs. 400/- from the witness and on refusal, the witness was beaten and an amount of Rs. 50/- were taken by the petitioner from the witness. In third incident, the petitioner insisted that the witness should keep one bag belonging to the petitioner which was containing illegal liquor, and on refusal, the witness was beaten, while the fourth incident narrates the demanding of money by the petitioner from the witness by way of loan, and on refusal, the witness was beaten. In all the four incidents, it was alleged that the public order was disturbed.

5. After relying upon the above materials and considering the investigation papers in all the five cases registered against the petitioner, the detaining authority came to the conclusion that the petitioner was dealing in selling, transporting and storing illegal liquor. The detaining authority also concluded that the petitioner was a habitual offender committing offence of causing injuries to persons. The detaining authority also concluded that the petitioner was dangerous, ferocious and of violent temperament, causing fear and terror among the people and was engaged in illegal activities. According to the detaining authority, the petitioner was in habit of picking up quarrels and beating innocent persons in executing his illegal activities. The detaining authority therefore concluded that the petitioner was bootlegger as well as dangerous person within the meaning of the PASA Act. The detaining also concluded that the activities of the petitioner were prejudicial to the maintenance of public order as well as public health and were required to be prevented forthwith. After considering other remedies available against the petitioner, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner as bootlegger as well as dangerous person under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

5. Learned Advocate Ms.Subhadra G. Patel for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record by the AGP, was also taken into consideration.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue as to whether the order of detention is vitiated on the ground of delay in passing the order.

7. The established facts of the case are, in the last offence, which registered against the petitioner for the breach of the provisions of the Bombay Prohibition Act, the detenu was released on bail on 11th of October, 2004. Thereafter, on 25th of October, 2004, the sponsoring authority recorded in-camera statements of the witnesses for the unreported incidents occurred around 25th of September, 2004, 10th of September, 2004, 5th of October, 2004 and on 15th of October, 2004. Undoubtedly,

the proposal was submitted to the detaining authority on 1st of November, 2004 and he verified the in-camera statements on 26th of November, 2004, and order came to be passed on 29th of November, 2004. In this backdrop of the facts, the question arises whether the live link between the activities of the petitioner and the passing of the order of detention is snapped.

8. The detaining authority in his affidavit-in-reply stated that he received the proposal on 1st of November, 2004 and thereafter he personally verified the genuineness and correctness of the statements of the witnesses and the incidents narrated in it by calling the said witnesses to his office on 24th of November, 2004 and 26th of November, 2004 and thereafter, after considering the overall facts and circumstances of the case as well as the legal provisions applicable to the facts of the case, arrived at the subjective satisfaction of passing the order of detention.

9. It becomes very clear from the grounds of detention as placed on record as well as from the affidavit-in-reply filed by the detaining authority that, firstly, the detaining authority took into consideration two stale instances occurred on 30th of October, 2002 and on 15th of October, 2003. So far as the case under the Bombay Prohibition Act is concerned, the case registered against the petitioner under the Bombay Prohibition Act on 8th of January, 2003 is also taken into consideration. However, on going through the record, the fact remains that the sponsoring authority recorded the statements of the witnesses on 25th of October, 2004 and forwarded the proposal to the detaining authority on 1st of November,2004. What clearly appears from the affidavit-in-reply of the detaining authority is, the detaining authority called the witnesses in his office for verification and genuineness of the statements on 24th of October, 2004 and 26th of November, 2004, and thereafter considered the whole material placed before him. Therefore, a proposal was made on 1st of November, 2004, but nothing appears to have been done till 24th of November, 2004, and taking into consideration the last offence registered against the petitioner as well the date of his release on bail on last offence and the date of passing the order of detention, it clearly appears that the live link between the objectionable activities of the petitioner and passing of the order of detention is snapped. Prompt action under the preventive detention is solicited by law applicable on preventive detention because the nature of detention is such as to call for immediate action. This is so because when a subjective

satisfaction is arrived at that the objectionable activities of a petitioner is required to be prevented forthwith, then the lack of prompt action leads to believe that the live link between the objectionable activities of the petitioner and the passing of the order is snapped. This is exactly happened in the present case, as aforesaid, no action could be taken during 1st of November to 24th of November, 2004 so as to snap the live link connecting the petitioner with preventive detention through his illegal activities. The order under challenge, therefore, is required to be quashed and set aside on this ground alone that there is a delay in passing the order so as to disconnect the activities of the petitioner and the order of detention.

11. In the result, the petition is allowed. The order passed by District Magistrate, Bhavnagar, on 29th of November, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Mangulubhai Dadbhai Bhisaria is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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